

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of CLARK, Minors.

UNPUBLISHED
November 19, 2013

No. 315585
St. Clair Circuit Court
Family Division
LC No. 11-000423-NA

Before: SAWYER, P.J., and O'CONNELL and K.F. KELLY, JJ.

PER CURIAM.

Respondent appeals as of right the trial court order terminating her parental rights to the minor children under MCL 712A.19b(3)(c)(i) and (g). We affirm.

Before terminating a respondent's parental rights, the trial court must make a finding that at least one of the statutory grounds under MCL 712A.19b(3) has been established by clear and convincing evidence. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). The trial court must order termination of parental rights if it also finds that termination is in the children's best interests. MCL 712A.19b(5). This Court reviews parental termination decisions for clear error. *In re Rood*, 483 Mich 73, 90-91, 126 n 1; 763 NW2d 587 (2009). Clear error exists "if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *In re BZ*, 264 Mich App 286, 296-297; 690 NW2d 505 (2004). A trial court may consider evidence on the whole record in making its best-interest determination. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000).

The trial court did not clearly err in finding that MCL 712A.19b(3)(c)(i) and (g) were established by clear and convincing evidence. The primary conditions that led to petitioner's intervention were respondent's substance abuse and inadequate parenting skills. The children were removed from her care after she tested positive for THC and methamphetamines. The younger child also tested positive for THC shortly after birth. Respondent admitted the petition allegations and consented to the court's temporary jurisdiction of the children. Respondent was ordered to participate in and benefit from a case treatment plan that included parenting classes, psychiatric and psychological evaluations, counseling, medication recommendations and reviews, substance abuse assessment, and random weekly drug screens. She was also ordered to obtain and maintain safe, substance-free, and suitable housing for at least 90 consecutive days, along with a legal income source sufficient to provide for her children's needs. Respondent was

enrolled in a money management program because she had a history of evictions and utility shut-offs.

The court properly concluded that respondent had not complied with or benefited from her treatment plan. Respondent did not complete the recommended outpatient substance abuse treatment after she was discharged from an inpatient program. She continued to test positive for illicit drugs or drugs for which she did not have a valid prescription, and she failed to provide samples for drug screens. Additionally, respondent's therapist reported that respondent failed to make any progress in counseling and noted that she had inadequate life coping skills. The trial court heard persuasive testimony from the case worker that, despite support services, respondent's behaviors and drug dependence remained unchanged. Further, the case worker and foster parent testified that respondent had inadequate parenting skills and was unable to demonstrate that she learned anything from a completed parenting program. After more than a year of services, respondent had failed to rectify the conditions that brought her children before the court, and there was no reasonable likelihood that her substance abuse would be rectified within a reasonable time. Respondent also remained unable to properly provide for her children. She had more than a year to overcome her drug addiction and acquire necessary parenting skills. The trial court reasonably concluded that there was no reasonable expectation that respondent would be able to provide proper care and custody within a reasonable time considering the children's ages.

Respondent argues that there was insufficient evidence that she had a significant substance abuse problem. She contends that she failed to provide drug screens because of transportation and financial issues. She also argues that the trial court improperly concluded that a supervised visit was canceled because respondent was allegedly under the influence of drugs. These claims are meritless. Respondent admitted the petition allegations that she had seven prior Children's Protective Services (CPS) investigations for suspected substance abuse and a prior open case, thus making her longstanding substance abuse part of the record. Before the children's removal, respondent had been dismissed from at least two physicians' offices for attempting to obtain improper prescriptions. After the children's removal, as the case worker testified, respondent refused to provide random weekly drug screens even when everything was provided for her to do so. The case worker also testified that, after the supervised visit in question, she personally accompanied respondent to the drug testing site out of concern for respondent's safety, and respondent tested positive for methamphetamines. Respondent admitted that she had relapsed by using crystal methamphetamines and THC, and that she was also abusing her prescribed medication. Respondent's parenting time was suspended until she completed inpatient treatment and provided three consecutive negative drug screens. The record shows that respondent continued to abuse drugs after she was discharged from inpatient treatment.

Next, respondent argues that the termination must be reversed on the ground that the trial court suspended her parenting time without ordering psychological evaluation or counseling for

the children, as required by MCL 712A.13a(13).¹ Respondent did not present this issue in the trial court; accordingly, we review the issue for plain error affecting respondent's substantial rights. *In re Utrera*, 281 Mich App 1, 8; 761 NW2d 253 (2008). Reversal is unwarranted unless the alleged error "seriously affected the fairness, integrity, or public reputation" of the proceedings. *People v Carines*, 460 Mich 750, 774; 597 NW2d 130 (1999).

In this case, the failure to order psychological evaluation or counseling for the children before suspending respondent's parenting time did not affect the fairness, integrity, or public reputation of the termination proceedings. The record establishes that respondent was under the influence of a substance when she came to supervised parenting time, which reasonably presented concerns about respondent's safety and the safety of the children. The trial court suspended parenting time and required respondent to attend in-patient rehabilitation, as well as to complete subsequent drug screens. Contrary to respondent's contention, the ultimate termination of her parental rights did not result from the suspension of her parenting time. Instead, the termination resulted from her prolonged substance abuse, her inability to comply with substance abuse treatment, and her corresponding inability to provide proper care and custody for the children. The alleged error by the trial court in failing to order psychological testing or counseling under MCL 712A.13a(13) was harmless. Cf. *In re Utrera*, 281 Mich App at 8.

The trial court also did not err in finding that termination of respondent's parental rights was in the children's best interests. Respondent had not successfully addressed her chronic substance abuse issues and was unable to function appropriately during parenting time. Respondent's psychiatrist refused to continue to work with her because she was shopping around for prescription medication with other physicians. The case worker testified that respondent's continued use of drugs, particularly methamphetamines, put the children in danger. The trial court reasonably concluded that respondent was unable to build a relationship with her children because of her continuing substance abuse.

Respondent further asserts that reversal is warranted because the trial court clearly erred in relying on the lack of parenting time in considering the children's best interests. However, the trial court based its best-interest determination on respondent's entrenched substance abuse and not merely on the fact that respondent had not seen her children for the previous seven months. Further, there was ample evidence that, before the suspension, respondent's bond with the children was tenuous at best. The case worker and foster parent regularly observed respondent being completely disengaged from her children during parenting time. Respondent's claim that she had obtained the necessary parenting skills to care for her children ignores a clear record. There was significant testimony that she was unable to meet the children's basic needs, such as burping her baby and safely using a car seat. She was unable to play with her older child, despite his efforts to interact with her. Considering the whole record, respondent fell short of being able to provide her children with a safe, stable, and permanent environment.

¹ MCL 712A.13a(13) was previously codified as MCL 712A.13a(11). See 2012 PA 115.

Affirmed.

/s/ David H. Sawyer
/s/ Peter D. O'Connell
/s/ Kirsten Frank Kelly